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May 24, 2000

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VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: Comments of Thomson Consumer Electronics
 in PP Docket No. 00-67**

Dear Ms. Salas:

Enclosed for filing please find the original and nine (9) copies of the Comments of Thomson Consumer Electronics in the above-referenced docket.

Please stamp and return to this office with the courier the enclosed extra copy of this filing designated for that purpose. Please direct any questions that you may have to the undersigned.

Respectfully submitted,

Lawrence R. Sidman

Lawrence R. Sidman

Enclosures

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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Compatibility Between)

Cable Systems And)

Consumer Electronics Equipment)

PP Docket 00-67

COMMENTS OF
THOMSON CONSUMER ELECTRONICS, INC.

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**Before the
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**COMMENTS OF
THOMSON CONSUMER ELECTRONICS, INC.**

I. INTRODUCTION AND STATEMENT OF INTEREST.

Thomson Consumer Electronics, Inc. ("Thomson") respectfully submits these Comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Notice of Proposed Rulemaking* in the above-captioned proceeding.¹ Thomson commends the Commission for its continuing efforts to provide cable subscribers, who comprise approximately seventy percent of the nation's television households,² with a seamless and timely transition to digital television ("DTV") service, and is pleased to have this opportunity to comment on the outstanding cable/DTV compatibility issues raised in the *NPRM*.

Thomson, headquartered in Indianapolis, Indiana, is best recognized for its RCA, PROSCAN and GE brand names. Thomson is the market leader in U.S. sales of color

¹ *Notice of Proposed Rulemaking* in PP Docket 00-67 (rel. Apr. 14, 2000) ("*NPRM*").

² *Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming*, sixth annual Report in CS Docket No. 99-230, ¶ 20 (rel. January 14, 2000).

TV receivers, VCRs, digital satellite receivers and, most recently, digital high definition (“HDTV”) set-top boxes. One out of every five television products sold in the United States is a Thomson product.

Thomson has played a pioneering role for more than a decade in the development and launch of digital television service in the United States. As a member of both the Advanced Television Research Consortium and, subsequently, the “Grand Alliance,” Thomson was immersed in the engineering and testing that culminated in the creation of the ATSC terrestrial digital television transmission standard that was adopted by the Commission in 1996 as the U.S. DTV standard.

Thomson has been in the vanguard of industry efforts to provide American consumers with a range of DTV products designed to enable consumers of various economic means and tastes to participate in the DTV experience. Accordingly, Thomson manufactures everything from 61” fully-integrated projection HDTV receivers to its DTC100 digital television set top box, retailing for only \$649. In addition, this summer, Thomson will introduce a 38” direct-view, fully-integrated HDTV receiver at a suggested retail price of \$3,999, reflecting a remarkable fifty percent price drop compared to earlier HDTV products. Thomson is working to continue to drive down DTV prices so that all Americans can enjoy the benefits of DTV technology as quickly as possible.

Thomson is committed to ensuring that the seventy percent of American television households viewing their television over cable will be able to participate fully, seamlessly and quickly in the DTV experience. Thomson expects that it will be a leading manufacturer of “cable-ready” DTV receivers and digital cable set-top boxes. To that

end, Thomson has been heavily involved in the industry working groups chiefly responsible for producing the earlier CEA/NCTA accords on direct connection of DTV receivers to digital cable systems and provision of PSIP information.

II. THE OVER 67 MILLION HOUSEHOLDS SUBSCRIBING TO CABLE MUST BE ASSURED A SEAMLESS TRANSITION TO DTV.

Thomson believes that there are several overarching principles which should govern the DTV transition for cable subscribers.³ First, the basic expectations of cable subscribers regarding the services they receive today and how they access those services should not be disturbed by the digital transition. In particular, cable subscribers receiving basic cable services in today's analog television environment without using a cable set-top box should have the opportunity to access such basic services without being required to use a cable set-top box in the digital environment. Second, labeling of "cable ready" digital television receivers and cable set-top boxes should provide consumers with the information they need to understand the different levels of service, e.g. basic and premium vs. "interactive" services, which they may be able to receive with different digital television products. Third, adequate safeguards against signal piracy and unauthorized copying of digital content, and strict legal enforcement of those measures, are critical to a successful digital transition. The content community must be assured that its digital content can be protected while consumers must be assured that digital television products they have purchased will not be disabled by third parties.

³ Serving cable subscribers also is essential to attainment of the DTV penetration levels stipulated by Congress when it adopted its DTV transition timetable. See Balanced Budget Act of 1997 ("BBSA"), Pub. L. 105-33, 111 Stat. 251 (1997) (codified at 47 U.S.C. § 309 (j) (14) (A)-(B)). These benchmarks simply will not be met if consumers are not presented with equipment options that are both technologically and financially attractive.

The two voluntary agreements reached earlier this year by CEA and NCTA concerning baseline DTV/cable compatibility specifications and PSIP reflect very significant progress along the path to making digital television readily and ubiquitously available to cable consumers.⁴ Although continuing industry dialog and further agreement is indispensable to filling in important details in these accords, they have established a conceptual foundation for the design and manufacture of cable compatible DTV receivers. Much work still needs to be done. Resolution of the issues addressed in this NPRM, preferably by inter-industry agreement or, if necessary, by Commission action, will further empower cable subscribers to participate in the digital television resolution.

III. LABELING MUST FACILITATE CONSUMERS' ABILITY TO MAKE INFORMED DIGITAL TELEVISION PRODUCT CHOICES.

Thomson supports the imminent CEA/NCTA compromise regarding labeling and believes that the agreement will allow consumers to choose among "cable ready" equipment offering a variety of functions and spanning a broad price range. Thomson believes that the labeling approach reflected in the contemplated agreement will help eliminate confusion in the marketplace.

The proposed labeling should reflect the entirely correct view that a DTV receiver need not contain a 1394 port to qualify under the broad category of "cable ready." Based upon the experience in the analog television era, today's cable consumer has reason to expect that a cable compatible DTV receiver will receive and display basic and premium digital cable programming (though not all programming) as a stand-alone device

⁴ See NPRM at ¶ 12 and n.31

connected directly to a cable system providing digital programming without the need for a cable set-top box.⁵ In fact, for roughly 50 percent of cable viewers, cable television is nothing more than “basic” cable.⁶ Therefore, it is important that manufacturers of DTV receivers respond to these viewers and provide products capable of receiving digital cable via a direct connection from the wall. Such a DTV receiver does not need a 1394 port. It should be labeled in a manner which indicates, on the one hand, that it is “cable ready” but, on the other hand, that it will not provide as much potential digital cable functionality as a DTV receiver with a 1394 port. Such an approach is consistent with the Commission’s current cable compatibility rules which ensure that consumers could access a range of cable services using a “cable ready” television receiver without obtaining any additional equipment from the cable operator.⁷ This premise has molded consumer perceptions and expectations, and should be carried forward into the digital age.

Furthermore, Thomson submits that requiring 1394 connectors on all “cable ready” sets would run afoul of Section 624A(c)(2)(D), which prohibits the Commission from affecting “features, functions, protocols, and other product and service options.” Tying cable readiness directly to a feature that is not necessary for cable service would force manufacturers to include a 1394 connector when they otherwise would not.

⁵ In point of fact, this expectation is grounded in law. Section 624(c)(2)(B)(ii) of the Communications Act states that regulations prescribed by the Commission must require cable operators “to the extent technically and economically feasible, to offer subscribers the option of having all other channels [not requiring a converter box] delivered directly to the subscribers’ television receivers or video cassette recorders without passing through the converter box.”

⁶ *Annual Assessment of the Status of Competition in the Markets for the Delivery of Video Programming, Sixth Annual Report* in CS Docket No. 99-230, ¶ 20 (rel. Jan. 14, 2000).

⁷ *NPRM* ¶ 14.

Consequently, embracing a 1394 connector as a prerequisite to cable readiness would affect the features, functions and protocols of receivers in contravention of Section 624A(c)(2)(D).

By the same token, DTV receivers with a 1394 connector also are clearly “cable ready,” and capable of receiving advanced and “interactive” digital services such as video-on-demand and Impulse-PPV. They merit a different or at least additional designation which recognizes their enhanced capability for interfacing with devices that enable these interactive applications and apprises cable subscribers of that fact. In short, the labeling should help explain to the consumer why a DTV receiver equipped with a 1394 port might cost more than a “cable ready” DTV receiver without a 1394 port.

Thomson also urges the Commission to recognize that labeling must extend beyond receivers. Labeling of set-top boxes is important because it will reduce consumer confusion and instruct consumers regarding their ability to effectively “pair” their simultaneously- or previously- purchased equipment (*i.e.*, receivers and set-top boxes) and create a total integrated system. Set-top boxes with or without 1394 connectors also should fall under the “cable ready” labeling umbrella. Again, consumers must have the choice.

IV. THE TERMS OF DFAST LICENSING MUST NOT BE PERMITTED TO IMPINGE UPON THE FUNCTIONALITY AND AVAILABILITY OF CONSUMER ELECTRONICS EQUIPMENT.

The Commission, in the *NPRM*, does not assert broad jurisdiction regarding copy protection and, in fact, does not have authority to mandate a copy protection standard. While Thomson does not ask the Commission to exceed its authority, it does wish to enunciate some principles that should guide any copy protection debate. First, Thomson

wishes to note that it is possible to break any method of security. Security solutions must therefore be renewable, and legal enforcement must play a major role in any effective copy protection scheme. Thomson notes that as technology evolves, the importance of an enforcement framework is magnified. Perhaps most importantly, a copy protection scheme, or associated licensing, must not unduly restrict a consumer's right to enjoy the functions and continued operation of purchased electronics equipment.

The Commission has clear authority to assure commercial availability of navigation devices (*i.e.*, to create a fully-competitive market for such devices). Section 629 states that: "The Commission shall, in consultation with appropriate industry standard-setting organizations, adopt regulations to assure the commercial availability, to consumers of multichannel video programming" of navigation devices."⁸ In so instructing the FCC, Congress sought to loosen an anticompetitive impairment to consumer choice that was without technical justification. Now, through DFAST licensing, there is concern that some cable interests appear poised to tighten control over navigation device manufacturers and, ultimately, consumer choice.

Thomson shares Circuit City's concern regarding DFAST licensing⁹ and firmly believes that the terms of a technology license must not: (1) precondition product certification and the right to attach on requirements unrelated to system security or conditional access; (2) impose obligations on competitive devices that properly pertain to POD modules (rather than host devices), or forbid the inclusion of other technology (like

⁸ 47 U.S.C. § 549(a).

⁹ See Letter from Robert. S. Schwartz to Magalie R. Salas FCC, Office of the Secretary (dated Feb. 2, 2000), in CS Docket No. 97-80.

that related to competing MVPDs such as DirecTV) in a receiver; or (3) empower a third party with the ability to render a consumer device obsolete post-sale.

First, Part 76.1204(c) of the Commission's Rules, 47 C.F.R. § 76.1204(c), prohibits licensors from imposing requirements unrelated to protection against threats to system security and conditional access. Copy protection is not part of system security or conditional access. Copying is a fair use under appropriate circumstances; conversely, the fair use doctrine is not a defense to the act of gaining unauthorized access. This distinction between copy protection and access is widely recognized. For example, Congress drew a bright line between access and copy protection in the Digital Millennium Copyright Act of 1998¹⁰ and the Commission, in its *Navigation Devices Order*, recognized that copy protection was not the same as access or security.¹¹ While DFAST licensing agreements may include security and conditional access obligations, they cannot, and must not impose any copy protection requirements.

Second, security and access functions are to reside in the POD module, and not in competitive devices. The Commission has previously determined that separation of security will significantly enhance the commercial availability of the equipment. Strict separation of security, according to the Commission, allows cable operators to design and operate equipment reflecting their particular security needs, and facilitates the universal,

¹⁰ Pub. L. No. 105-304, 112 Stat. 2860 (Oct 28, 1998). While Section 1201 of the Act prohibits circumventing a technological measure in order to gain unauthorized access, it does not prohibit circumventing a measure that prevents copying.

¹¹ "Copy protection systems and devices that impose a limited measure of data encryption control over the types of devices that may record (or receive) video content [will] not be subject to the separation requirement." *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices*, 13 FCC Rcd 14775, ¶ 63 (1998) ("*Navigation Devices Order*").

commercial availability of navigation devices, allowing manufacturers to provide a diverse array of competitive equipment.¹²

For the same competitive reasons underlying separation requirements, the terms of a technology license must not work to forbid the inclusion of other technology in competitive devices. On this point Section 76.1204(c) clearly states that “No multichannel video programming distributor shall by contract, agreement, patent, intellectual property right or otherwise preclude the addition of features or functions to the equipment made available pursuant to this section that are not designed, intended or function to defeat the conditional access controls of such devices or to provide unauthorized access to service.”¹³

Third, the terms of a licensing agreement must not vest a third party with the power to render a consumer device obsolete post-sale. Consumers who have purchased equipment rightfully expect that equipment to remain under their control. Thomson believes that no third party should have the right to unilaterally disable consumer’s equipment. Not only are there no assurances that such a power could be exercised with the precision necessary to protect honest consumers, but such an encroachment by a third party into the homes of consumers is an ominous precedent that must be prevented.

V. CONCLUSION.

Thomson looks forward to a comprehensive and long-term resolution to all outstanding cable compatibility issues and will continue to work with interested parties to ensure a seamless digital transition for all consumers. Thomson submits that a labeling

¹² *Navigation Devices Order* at ¶ 61.

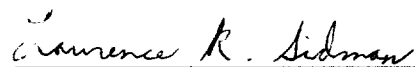
¹³ 47 C.F.R. § 76.1204(c).

scheme that informs consumers according to their realistic and historical expectations and security licensing agreements that facilitate, rather than restrict, a consumer's ability to enjoy the functions of purchased equipment are essential components of a successful transition.

Respectfully submitted,

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